

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ALFRED TURNER,

Petitioner,

-v.-

9:08-CV-928
(DNH)(GHL)

JOSEPH T. SMITH, Superintendent,

Respondent.

APPEARANCES:

ALFRED TURNER, 05-A-6228

Petitioner *pro se*

Shawangunk Correctional Facility

P.O. Box 700

Wallkill, New York 12589

GEORGE H. LOWE, U.S. MAGISTRATE JUDGE

ORDER

On August 29, 2008, Petitioner Alfred Turner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging a judgment of conviction rendered in Albany County Supreme Court. Dkt. No. 1. Petitioner also filed a motion to stay his petition in order to permit him to exhaust a claim that trial counsel was ineffective. *See* Dkt. No. 2. Petitioner's motion to stay was granted on September 4, 2008.

Presently before the Court is Petitioner's amended petition and several exhibits. Dkt. No. 11. In the amended petition, Petitioner states that on December 8, 2005, he was convicted following a jury trial in Albany County Court of second degree burglary and petit larceny. Dkt. No. 11 at 1-2. He was sentenced to serve an aggregate determinate term of twelve years in prison followed by five years postrelease supervision. *Id.* Petitioner states that the Appellate Division, Third Department,

affirmed his conviction on February 1, 2007, and that the New York Court of Appeals denied leave to appeal on May 25, 2007. *Id.* at 3-4. Petitioner filed a motion to vacate his conviction pursuant to New York Criminal Procedure Law (“CPL”) § 440.10 on or about August 21, 2008. *See* Exhibits to Amended Petition, Exhibit G. Petitioner states that the motion was denied by Albany County Court on June 2, 2009. Dkt. No. 11 at 4.

Petitioner raises the following grounds for habeas relief: (1) trial counsel was ineffective for failing to inform him of a plea offer to a reduced charge in exchange for a sentence of five years in prison; and (2) trial counsel was ineffective during jury selection. Dkt. No. 11 at 5-12.

Since review of Petitioner’s section 440 motion in state court is now complete, the stay previously granted in this matter is immediately lifted. Upon review of the petition, the Court has determined that a response must be filed by the Respondent.

WHEREFORE, it is hereby

ORDERED, that the stay in this action is immediately lifted and Petitioner’s habeas corpus proceeding is placed on the Court’s active docket; and it is

ORDERED, that the Clerk of the Court shall serve a copy of this Order, together with a copy of the amended petition and exhibits, in accordance with the Local Rules, upon Respondent and the Attorney General of the State of New York; and it is

ORDERED, that the Clerk of the Court shall serve a copy of this Order on Petitioner in accordance with the Local Rules; and it is

ORDERED, that **within sixty (60) days** of the filing date of this Order, Respondent shall file and serve an answer to the petition and provide this Court with the records relevant to the

petition;¹ and it is

ORDERED, that upon the filing of Respondent's answer, the Clerk of the Court shall return the file to the Court for further review; and it is

ORDERED, that the parties shall file all pleadings, motions or other documents relating to this action with the Clerk of the United States District Court, Northern District of New York, James Hanley U.S. Courthouse & Federal Building, 7th Floor, 100 South Clinton Street, Syracuse, New York 13261-7367. The parties must accompany any paper that they send to the Court or to the Clerk of the Court with a certificate setting forth the date on which they mailed a true and correct copy of the same to all opposing parties or their counsel. The Court will strike any letter or other document that the Court or the Clerk of the Court receives which does not include a proper certificate of service. Petitioner must comply with any requests of the Clerk's Office for any documents that are necessary to maintain this action. **Petitioner must also promptly notify the Clerk's Office and all parties or their counsel of any change in his address; his failure to do so will result in the dismissal of this action.**

All parties must comply with Local Rule 7.1 of the Northern District of New York when filing motions, which are to be made returnable before the magistrate judge assigned to this case on any business day with proper allowance for notice as the Rules require. **All motions will be decided on the papers without oral argument unless the Court otherwise orders.**

¹ Respondent shall ensure that the records are arranged in chronological order, sequentially numbered, and otherwise conform fully with the requirements of Local Rule 72.4.

Dated: October 20, 2009
Syracuse, New York


George H. Lowe
United States Magistrate Judge